

May 11th, 2007

Commission's Secretary  
Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554  
Deena Shetler: deena.shetler@fcc.gov  
FCC Contractor: fcc@bcpiweb.com

Re: WC Docket No. 06-210  
CCB/CPD 96-20

**Ex-Parte Comments of 800 Discounts, Inc., One Stop Financial, Inc.,  
Winback & Conserve Program, Inc. and Group Discounts, Inc**

Further Response to AT&T's May1st 2007 Attempt to Cover-Up AT&T's  
Concessions that the Transferors Revenue Commitment and Associated Shortfall  
and Termination Obligations Do Not Transfer on "Traffic Only" Transfers

Dear FCC Staff

AT&T asserts that it was AT&T's position before the DC Circuit that the phrase "all obligations" encompassed shortfall and termination obligations. AT&T asserted that this was its position to the DC Circuit:

AT&T's May 1<sup>st</sup> 2007 filing page 4:

Petitioners also continue to flog statements AT&T counsel David Carpenter made before the D.C. Circuit, and claim that AT&T has offered only "fictitious" and "comical" "cover-ups" for these "concessions." April 18<sup>th</sup> Ex Parte at 12-13. Once again, however, petitioners ignore the relevant context in which these statements were made. **Nowhere did he concede that the phrase "all obligations" did not include shortfall and termination obligations**

It was NOT AT&T's position before the DC Circuit---- that the phrase "all obligations" within tariff section 2.1.8 encompassed the transferors plan commitments. The following also conclusively establishes that S&T obligations were not within the phrase "all obligations" nor within (2) the unexpired portion of any applicable minimum payment period(s).

It is obvious that Mr. Carpenter asserted that S&T obligations were encompassed within section 2.1.8's second requirement: (2) the unexpired portion of any applicable minimum payment period(s). The FCC FOIA notes indicate that S&T obligations are not within the minimum payment period(s).

Additionally the tariff evidence on minimum payment period (under section 2.5.5 and section 6) presented herein demonstrates that S&T obligations were not within the phrase "all obligations" nor within (2) the unexpired portion of any applicable minimum payment period(s).

It was definitely not AT&T's position to the DC Circuit (delivered by Mr. Carpenter) that S&T obligations were encompassed within the phrase: "all obligations."

AT&T puts the cart before the horse and wants the FCC to believe that section 2.1.8 states "includes all obligations" when in fact it is the reverse stating "all obligations" then explicitly states what is included.

No business person could believe any differently, especially when AT&T itself interpreted 2.1.8 petitioner's way, and practiced 2.1.8 petitioners way. Petitioner's presented exhibit R in petitioners 9/27/06 filing---a filing by the Telecom Resellers Association counsel (who represented hundreds of aggregators and resellers) who stated in his petition to reject Tr. 8179 -----in regards to AT&T's interpretation of "all obligations":

**"AT&T never interpreted its tariff in this manner"**

To follow is Mr. Carpenter's position to the DC Circuit and you can plainly see that the revenue volume commitments that AT&T states are in the phrase "all obligations" are actually stated by Mr. Carpenter as being encompassed within 2.1.8's second obligation,--however he modifies the language because he knows S&T obligations are actually not there either:

Here is Mr. Carpenter's position (DC Circuit Oral Argument Transcript page 11, line 22)

Mr. Carpenter: "The tariff says you have to assume both the outstanding indebtedness and the un-expired part of the volume commitments."

He comes back with the same nonsense again a few minutes later: Mr. Carpenter's position (DC Circuit Oral Argument Transcript page 13, line 3)

“Our tariff says you have to assume the obligations for the indebtedness and the un-expired portion of the volume commitments.”

Mr. Carpenter's statements while being incorrect were still what AT&T's position was before the DC Circuit-not within the phrase “all obligations”. By law, tariffs must be explicit. Carpenters' arguments cannot read language into a tariff. If section 2.1.8 was intended to incorporate a “volume commitment,” it failed to do so. See section 2.1.8 on page 6 footnote 46 of exhibit B ( FCC 2003 Decision) to petitioners 9/27/06 filing.<sup>1</sup>

Mr. Carpenter's statements totally misread Section 2.1.8, in that this section expressly provides that the second obligation to be assumed after indebtedness is the unexpired portion of the “minimum payment periods,”--- a time commitment--- not a revenue volume obligation with associated S&T obligations.

See here as exhibit A is the applicable tariff page at the time of the “traffic only” transfer which provides the definition of Minimum Payment Period as:

**2.5.5. Minimum Payment Period** - The minimum payment period is the minimum period for which the Customer is required to make payment. The minimum payment period for WATS is one day, except as otherwise specified in Section 6. The charges applicable for that period include the recurring charge(s) plus any nonrecurring charge(s) and/or special construction charge(s) that may apply. The minimum payment period is calculated from the date that billing started after (1) the initial installation, or (2) a reinstallation after a move or change.

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<sup>1</sup> 2.1.8 Transfer or Assignment - These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

The minimum payment period for WATS is one day, except as otherwise specified in Section 6. There are no multi year plan revenue commitments with their associated shortfall and termination charges within the minimum payment period; if there were volume commitments within minimum payment period then they were transferred to PSE because PSE accepted the minimum payment period.

Exhibit B is AT&T tariff No. 2 “Section 6” that section 2.5.5 references. In regard to Minimum payment period Section 6 states:

**6.2. REGULATIONS** - In addition to the regulations in Section 2 and 3 preceding, the following apply.

**A. Minimum Payment Period** - The minimum payment period for AT&T MEGACOM 800 Service, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Overseas and/or AT&T MEGACOM 800 Service-Mexico is one month. The minimum payment period for AT&T 800 READYLINE and/or AT&T 800 Plan E and/or AT&T 800 READYLINE-Canada and/or AT&T 800 Plan K and/or AT&T 800 Plan P is one day.

Under section 6 AT&T made the minimum payment period one month for its “dedicated” T-1 type services whereas the “switched access” services like AT&T “Readyline” was one day.

However, neither is there any language within section 6 (that 2.5.5 minimum payment period references) that would mandate that the transferors “revenue commitment and associated shortfall and termination obligations” be transferred.

Mr. Carpenter’s position that S&T obligations were within 2.1.8’s second obligation: (2) the unexpired portion of any applicable minimum payment period(s) is pure nonsense. That is why he intentionally misquoted the second obligations.

**The Minimum Payment Period Law Conclusively Establishes that Revenue Commitments Can Not Be In the Phrase “All Obligations”**

It is even more absurd to believe that shortfall and termination obligations are encompassed within the phrase “all obligations” now that you understand what is meant by:

“the unexpired portion of any applicable minimum payment period(s)”

Petitioners have already made the point that if the transferee were to assume “all the obligations” of the transferor on a “traffic only” transfer this would mandate that the transferee would be obligated to assume 2.1.8’s first requirement “bad debt” on accounts that were never selected for transfer. Imagine a transferee being obligated to pay for end-users bad debt on accounts that were never transferred!

Just as absurd would be AT&T’s position that the transferee would have to assume “the unexpired portion of any applicable minimum payment period(s)” on end-users accounts that were never transferred!

Let’s examine the tariff sections that define the CSTPII/RVPP offering:

AT&T tariff No. 2 at section 3.3.1.Q bullet 6 (exhibit D in petitioner’s 9/27/06 filing) states:

**The Customer will assume** all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.

Under AT&T’s “all obligations” theory the transferee----- on a “traffic only” transfer----- has to be obligated for “all obligations” of the transferor. This would mandate that the transferee would be obligated for the unexpired portion of any applicable minimum payment period(s) **on accounts not transferred to it!**

This would be contrary to 3.3.1.Q bullet 6 because AT&T theory would mean that you had **two simultaneous primary customers**.

Also see 3.3.1.Q bullet 8 (exhibit D in petitioner’s 9/27/06 filing):

In the event that a location is in default of payment, AT&T will seek payment **from the Customer**. If the Customer fails to make payment for the location in default, AT&T will: (1) reduce the discount by the amount of the billed charges not paid by that location, if any, and apportion the remaining discount, if any, to all locations not in default, and if payment is not fully collected by the above method, (2) terminate the RVPP/CSTP II for failure of the Customer to pay the defaulted

payment.

Above the Customer (i.e. the Petitioner) is liable for the location that remained on its plan!

Also see 3.3.1.Q bullet 10 (exhibit D in petitioner's 9/27/06 filing):

**Shortfall and/or termination liability are the responsibility of the Customer.** Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for **inclusion under the plan**. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations **under the plan**.

It is contrary to the tariff that a transferee can be obligated for accounts not transferred to it. However AT&T's bogus theory mandates that the transferee is obligated to assume all obligations on accounts not transferred!!! **AT&T's bogus theory would mandate that there would be two primary customers simultaneously responsible for one end-user!**

This has nothing to do with joint and several liability for two reasons:

- 1) Joint and several liability per section 2.1.8E does not pertain to traffic only transfers.
- 2) the accounts remaining **are not being transferred** so there is no joint and several liability that come into play even if "joint and several liability" pertained to "traffic only" transfers!!!

Such a bogus AT&T theory---as per section 6 under minimum payment period---would include being obligated to pay for many thousands of dollars of T-1 Dedicated Services (AT&T Megacom Service) **on accounts that were never transferred to it!**  
**Total AT&T nonsense.**

To understand the absurdity of this bogus AT&T "all obligations" theory you have to understand that AT&T T-1 dedicated Megacom Services are for major users; that can go into the millions of dollars per month. Just the monthly Point of Presence (POP) line charges may be \$500 a month before any usage!

If AT&T's bogus "all obligations" theory was correct there would be no "traffic only" transfers; not the hundreds of thousands of "traffic only" transfers, that AT&T claims it has done under 2.1.8. No transferee would ever want to receive account traffic if it had to be subjected to enormous liability for accounts and revenue that the **transferee never received!!**

It all boils down to the simple fact that the reason why AT&T has no evidence to support its bogus "all obligations" theory is because no evidence exists. All the "traffic only" transfer evidence presented shows that the plan obligations (revenue commitments and associated shortfall and termination obligations) do not transfer.

**All the Other Tariff Sections Support Petitioner's Tariff Analysis of 2.1.8**  
**"All Obligations" Pertain to Only what is Transferred--Traffic vs. Plan**

Section: 3.3.1.Q bullet 10	(S&T Obligations are Customers)
Section 3.3.1.Q bullet 6	(Customer responsible for accounts in their plan (i.e. bad debt))
Section 3.3.1.Q bullet 8	(Payment must come from Customer plan that the account is on)
Section: 2.1.8 E	(Joint & Several Liability Pertains only to Plan Transfers)
Section 5	(Discontinuation occurs only when ALL SERVICE discontinued)
Section 2.5.5	(Minimum Payment Period)
Section 6	(Minimum Payment Period)
Section 2.5.8	(Deposits- AT&T concedes not an issue on "traffic only" transfer)

The evidence is simply overwhelming in regard to actual marketplace transactions, and the law. AT&T has done nothing but pound the proverbial table.

**Exhibits Below:**

Respectfully Submitted  
One Stop Financial, Inc  
Winback & Conserve Program, Inc.  
Group Discounts, Inc.

800 Discounts, Inc

/s/ Al Inga  
Al Inga President

**EXHIBIT A**



AT&T COMMUNICATIONS  
Adm. Rates and Tariffs  
Bridgewater, NJ 08807  
Issued: July 29, 1998

TARIFF F.C.C. NO. 2  
Original Page 27.1.1  
Effective: July 30, 1998

**2.5.4. Late Payment Charges** - The late payment charge applicable to intrastate services as specified in the Local Exchange Company's local exchange service tariff also applies to AT&T 800 Service and AT&T WATS.

**2.5.5. Minimum Payment Period** - The minimum payment period is the minimum period for which the Customer is required to make payment. The minimum payment period for WATS is one day, except as otherwise specified in Section 6. The charges applicable for that period include the recurring charge(s) plus any nonrecurring charge(s) and/or special construction charge(s) that may apply.

The minimum payment period is calculated from the date that billing started after (1) the initial installation, or (2) a reinstallation after a move or change.

**2.5.6. Notice of Discontinuance** - The Customer's order to discontinue WATS must be received by this Company no later than the day on which WATS is to be discontinued except as otherwise specified in Section 6. All usage incurred will be billed regardless of the Customer's requested disconnect date.

## **Exhibit B**

AT&T COMMUNICATIONS  
Adm. Rates and Tariffs  
Bridgewater, NJ 08807  
Issued: December 9, 1994

TARIFF F.C.C. NO. 2  
17th Revised Page 136  
Cancels 16th Revised Page 136  
Effective: December 12, 1994

## WIDE AREA TELECOMMUNICATIONS SERVICE

### SECTION 6 - CUSTOM 800 SERVICES

#### 6.1. DESCRIPTION

**6.1.1. General** - Custom 800 Services are offered to meet Customer needs for specialized AT&T 800 Service. Custom 800 Services include AT&T MEGACOM 800 Service, AT&T 800 Plan E, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Overseas, AT&T MEGACOM 800 Service-Mexico, AT&T 800 READYLINE, AT&T 800 READYLINE-Canada, AT&T 800 Plan K and AT&T 800 Plan P. The Custom 800Cx Services Customer may receive calls via AT&T High Seas Service, or from overseas countries/areas and Mexico via AT&T's USADirect service. Calls made via AT&T High Seas Service will be placed to the AT&T International Operating Center located in Pittsburgh, Pennsylvania (NPA 412) and then be placed to the desired AT&T Number if the number is available in NPA 412. Calls made via AT&T USADirect Service will be placed to the AT&T Operator Service Center (OSC) and then placed to the desired AT&T 800 Number if the number is available in that Service Area. The AT&T Custom 800 Service Customer will only be billed the AT&T Custom 800 Service rate applicable to calls received from the OSC.

**6.2. REGULATIONS** - In addition to the regulations in Section 2 and 3 preceding, the following apply.

**A. Minimum Payment Period** - The minimum payment period for AT&T MEGACOM 800 Service, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Overseas and/or AT&T MEGACOM 800 Service-Mexico is one month. The minimum payment period for AT&T 800 READYLINE and/or AT&T 800 Plan E and/or AT&T 800 READYLINE-Canada and/or AT&T 800 Plan K and/or AT&T 800 Plan P is one day. Cx

**B. Notice of Discontinuance** - The Customer's order to discontinue AT&T MEGACOM 800 Service, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Overseas and/or AT&T MEGACOM 800 Service-Mexico must be received by this Company one month prior to the day on which the service is to be discontinued. Discontinuance of AT&T 800 READYLINE and/or AT&T 800 READYLINE-Canada and/or AT&T 800 Plan E and/or AT&T 800 Plan K and/or AT&T 800 Plan PCx may be ordered no later than the day the service is to be discontinued.